

### **REMARKS**

The Non-Final Office Action mailed August 10, 2007 has been reviewed and carefully considered. Reconsideration of the above-identified application, as herein amended and in view of the following remarks, is respectfully requested.

Claims 1-20 are pending in this application. Claims 12-20 have been withdrawn by the Examiner. The specification has been amended to correct typographical errors. Claims 1, 4 and 7 have been amended. No new matter has been added by the amendments.

As per the Examiner's request in paragraph 2 of the Office Action, Applicant affirms the election of Group I claims 1-11 but without traverse.

### **CLAIM OBJECTION**

Claim 4 was objected to due to informalities. Applicant has amended claim 4 to replace "eight-to-four" with "eight-to-fourteen." The specification on page 2 was amended accordingly to correct this typographical error. Accordingly, withdrawal of the objection is respectfully requested.

### **§101 REJECTION**

Claims 7-11 were rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. In response to the Examiner's comments, Applicant has amended claim 7 to recite, "[A] computer readable storage device having software instructions recorded thereon ..." Claims 8-11 depend from and include the limitations of claim 7.

As recited in MPEP 2106, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See *Lowry*, 32 F.3d at 1583-84, 32 USPQ 2d at 1035. Accordingly, withdrawal of the §101 rejection of claims 7-11 is respectfully requested.

### **§103 REJECTIONS**

Claims 1-11 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,466,832 to Zuqert et al. (hereinafter Zuqert) in view of U.S. Patent No. 6,389,548 to Bowles (hereinafter Bowles). Applicant respectfully disagrees.

Zuqert teaches a system for wirelessly transmitting audio data from a transmitter (a CD or DVD player) to one or more receivers (wireless speakers), wherein the one or more receivers receive at least two copies of a plurality of packets of audio data from the transmitter and assesses the quality level of at least one of the copies. Audio data from the copy having the desired quality is extracted. The transmitter disclosed in Zuqert is configured to check for the pair of channels most recently used, and these channels are used again for transmission. If no channels are found, the transmitter randomly chooses a pair of channels from predefined frequency channels for transmitting audio signals. If the user is still not satisfied with the transmission quality, he may press a frequency shift button which causes the transmitter to randomly choose a new pair of channels from the predefined channels. Alternatively, the receiver may command the transmitter to change the pair of

channels if the quality of transmission is beneath a predetermined level. *See* Col. 17, lines 17-29.

With respect to the receiver in Zuqert, the receiver also checks its memory for the previously used pair of channels, and if none are found, the current channel pair is assigned a random channel pair and the receiver tunes into the first channel of the current pair. If the receiver succeeds in locking onto the frequency, it continues with signal acquisition. *See* Col. 17, lines 55-63.

Significantly, it is to be noted that in Zuqert if the receiver fails to lock onto the channel over more than a suitable predetermined time interval, e.g., 0.1 seconds, the receiver tries to tune to the second frequency of the pair, or moves to a different pair of frequency channels. If the attempt fails, the receiver moves to the next pair, and so on, until the receiver succeeds in locking onto one of the channels. *See* Col. 17, line 63 to Col 18, line 4.

However, Zuqert fails to disclose or suggest at least re-initializing a demodulated audio file signal in response to a loss of a phase lock in demodulating and setting the receiving of the modulated audio file signal at one of a plurality of channel frequencies to re-establish the phase lock in the demodulating of the audio file signal, essentially as claimed in claims 1 and 7. While Zuqert arguably discusses attempts to tune to new/different channels, any tuning onto new channels in Zuqert is performed based on **quality** of signal transmission, not in response to a *loss of a phase lock*, essentially as presently claimed. Applicant acknowledges that this point was also affirmed by the Examiner in page 5 of the Office Action. In fact, there is no mention whatsoever of any loss of a phase lock in Zuqert; indeed, its methodology for tuning to different/new pairs of

channels is exercised in order to **attain** locking onto a channel in the first place. *See* Col. 18, lines 1-39.

The Examiner cites Bowles as curing the deficiencies of Zuqert, but the Applicant respectfully disagrees. Firstly, Bowles does not at all relate to wireless transmission of audio data as disclosed in Zuqert, nor relate to a wireless transmitter/receiver arrangement for audio file transfer as in the present application, but instead refers to a CD player system that reduces the effects of inaccuracies in CD manufacturing (e.g., asymmetry due to errors in the CD etching process). Therefore, one of ordinary skill in the art of Zuqert would not consider combining Zuqert with Bowles, especially for any purpose of addressing its deficiencies or making any improvements thereon.

Moreover, even assuming *arguendo* that Bowles could be combined with Zuqert, the combination falls short of the invention as presently claimed. With regard to Bowles, it is noted that asymmetry in CD manufacturing can introduce an undesirable DC component in the high frequency (HF) signal, and can significantly alter the measured run-lengths if a “zero crossing” is considered to be the moment of a Non Return to Zero transition. Therefore, Bowles proposes to provide a slicer for introducing a dynamically moving offset (“slicing threshold”) which, when applied to the HF signal, enables run (pulse) lengths in the HF signal to be reliably measured as the time between “zero crossings.” *See* Col. 7, lines 37-59. The slicing threshold comprises two components – an average value threshold and a dynamically varying adjustment of the average threshold which compensates for asymmetry. Thus, in Bowles the hfSync circuit 32 advantageously receives a HF signal that is essentially DC-free. *See* Col. 5, line 67 to Col. 6, line 7.

Further, the run-lengths in the HF signal are measured and an EFM waveform is regenerated which is sent to an EFM demodulation circuit 38 which extracts the original data values.

While Bowles generally mentions “phase error,” careful review reveals that in Bowles, its discussion regarding ‘phase error’ involves wherein the slicer 37 monitors the phase error detected by the hfSync’s Digital Phase Locked Loop and adjusts the slicing threshold to minimize the difference between consecutive phase errors. *See* Col. 8, lines 6-11. However, Bowles fails to disclose or suggest at least re-initializing a **demodulated audio file signal in response to a loss of a phase lock in demodulating and setting the receiving of the modulated audio file signal at one of a plurality of channel frequencies to re-establish the phase lock** in the demodulating of the audio file signal, essentially as claimed in claims 1 and 7. Bowles generally defines when a phase lock is deemed to have occurred (when the phase error remains below a user-specified threshold for a user-specified number of consecutive run lengths – *see* Col. 7, lines 16-18) but makes no mention whatsoever of any actions taken in response to a **loss of a phase lock in a demodulating of an audio file signal**. Instead, in response to its monitoring of phase errors, adjustments are simply made to its slice threshold. Further, there is no mention in Bowles of any adjustments or changes made in channel frequency settings, as presently claimed.

Most significantly, note that any of the adjustments made in Bowles to minimize its phase errors are performed *prior* to the demodulation of its EFM waveform. *See* FIG. 3, EFM Demod 38 and Col. 6, lines 10-14. Contrast this with the presently claimed “reinitializing said demodulating in response to a loss of a phase lock in said

demodulating...". Therefore, it is clear that Bowles fails to teach or suggest any loss of a phase lock in a **demodulated** audio file signal, much less any action taken in response to such phase lock loss, since all of its discussed adjustments/actions are in fact performed **prior** to any signal demodulation.

Accordingly, claims 1 and 7 are asserted to be patentable and nonobvious over Zuqert in view of Bowles for at least the reasons stated above. Claims 2-6 and 8-11 depend from claims 1 and 7, respectively. The dependent claims include the limitations of their respective independent claims and are therefore believed to be patentable and nonobvious for at least the reasons stated for claims 1 and 7.

#### **DOUBLE PATENTING REJECTION**

Claims 1-11 are provisionally rejected on the ground of non-statutory obviousness type double patenting as being unpatentable over claims 1-11 of co-pending U.S.

Application Serial No. 10/516859 in view of Zuqert. With respect to Zuqert, please see the above discussion with reference to the §103 rejection. Applicant will consider filing a Terminal Disclaimer in compliance with 37 C.F.R. 1.321 to overcome this rejection upon resolution of all other existing matters.

It is therefore respectfully submitted that the present invention is not disclosed or suggested by the cited references taken alone or in combination. Claims 1-11 are believed to be in condition for allowance for at least the reasons stated above.

Withdrawal of all the rejections and early and favorable reconsideration of the case is respectfully requested.

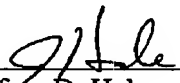
**CONCLUSION**

In view of the foregoing, Applicant respectfully requests that the rejections of the claims set forth in the Non Final Office Action of August 10, 2007 be withdrawn, that pending Claims 1-11 be allowed, and that the case proceed to early issuance of Letters Patent in due course. As discussed above, a terminal disclaimer will be considered upon indication by the Examiner that all other existing issues are resolved.

It is believed that no additional fees or charges are currently due. However, in the event that any additional fees or charges are required at this time in connection with the application, they may be charged to applicant's representatives Deposit Account No. 07-0832.

Respectfully submitted,

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